UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

21 ASSET MANAGEMENT HOLDING, LLC, Plaintiff, v. OCWEN FINANCIAL CORPORATION and OCWEN LOAN SERVICING, LLC Defendants.	)	Case No.

COMPLAINT

Plaintiff, 21 Asset Management Holding, LLC ("Plaintiff" or "21 Asset"), hereby complains against Defendants Ocwen Financial Corporation and Ocwen Loan Servicing, LLC (hereinafter collectively referred to as "Ocwen") as follows:

INTRODUCTION

This Complaint arises out of Ocwen's various material breaches of a certain Servicing Agreement (the "Servicing Agreement") between the parties whereby Ocwen was contractually obligated to service a certain pool of mortgage loans in various states across the Country (the "Loans") on behalf of 21 Asset. The Servicing Agreement requires Ocwen's compliance with the Securities Act of 1933, 15 U.S.C. § 77a, *et seq.*, compliance with 17 CFR 229.1122 (Compliance with applicable servicing criteria) and also "Accepted Servicing Practices" across the Country. Moreover, Ocwen is required to service the Loans in accordance with the Federal servicing rules and regulations issued by the Consumer Financial Protection Bureau and its obligations pursuant to a Consent Judgment issued by the United States District Court for the District of Columbia.

As more fully described below, Ocwen failed to comply with applicable law, failed to honor the terms and conditions of the Servicing Agreement and employed conflicting and illegal servicing practices with regard to the Loans. 21 Asset has suffered extensive damages as a direct result of Ocwen's conduct. Furthermore, 21 Asset seeks preliminary and permanent injunctive relief against Ocwen pursuant to F.R.C.P. 65.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over this matter by operation of 28 U.S.C. § 1331 and 1343, 17 U.S.C. § 77v and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367. Venue is appropriate pursuant to 28 U.S.C. § 1391(b)(3). Moreover, the parties consented to venue in this District pursuant to Section 13.15 of the Servicing Agreement.

PARTIES

2. Plaintiff, 21 Asset Management Holding, LLC, is a Florida limited liability company with a usual place of business at 2100 Ponce De Leon Blvd, Suite 720, Coral Gables, FL, 33134.

3. Defendant Ocwen Financial Corporation is the parent company of Ocwen Loan Servicing, LLC and has a principle place of business at 1661 Worthington Road, Suite 100, City of West Palm Beach, Palm Beach County, Florida, 33409.

4. Defendant Ocwen Loan Servicing, LLC, is a Florida limited liability company with a principle place of business at 1661 Worthington Road, Suite 100, City of West Palm Beach, Palm Beach County, Florida, 33409.

FACTUAL BACKGROUND

I. THE SERVICING AGREEMENT

5. In or about November of 2012, 21 Asset purchased the pool of Loans that are the subject of the present Complaint from Novastar Mortgage, Inc. ("Novastar").

6. The Loans are subject to the terms and conditions of a servicing agreement originally between Novastar (Owner) and Ocwen (Servicer) dated April 2, 2012 (hereinafter the "Servicing Agreement.")

7. The Servicing Agreement requires compliance with various Federal Laws, Statutes and Rules, including compliance with the Securities Act of 1933, Regulation AB provisions in accordance with 17 CFR 229.1122 and Acceptable Servicing Practices in States across the Country.

8. "Accepted Servicing Practices" across the Country, which the Servicing Agreement defines as "those mortgage servicing practices of prudent mortgage lending institutions which service mortgage loans of the same type as such Mortgage Loan in the jurisdiction where the related Mortgaged Property is located" are generally accepted as those guidelines issued by Fannie Mae and Freddie Mac.

9. In servicing loans, Ocwen is also obligated to comply with the Federal servicing rules and regulations issued by the Consumer Financial Protection Bureau, and as more fully outlined below, its obligations pursuant to a Consent Judgment issued by the United States District Court for the District of Columbia.

10. Pursuant to Article II, Section 2.03 of the Servicing Agreement, in servicing and administering Mortgage Loans for 21 Asset, Ocwen is required to "exercise the same care that it

customarily employs and exercises in servicing and administering mortgage loans for its own account, giving due consideration to Accepted Servicing Practices…"

11. Pursuant to Article IV, Sections 4.04 and 4.05 of the Servicing Agreement, Ocwen is required to provide 21 Asset with specific information and reports regarding the Loans.

12. Pursuant to Article IV, Section 4.06 of the Servicing Agreement, 21 Asset has the right to "examine and audit" all of Ocwen's records for Loans subject to the Servicing Agreement.

13. Pursuant to Article V, Section 5.01 of the Servicing Agreement, Ocwen is required to furnish this information to 21 Asset even absent its request for Ocwen to do so.

14. Pursuant to Article, VI, Section 10.05 of the Servicing Agreement, Ocwen represented to 21 Asset that it "does not believe, nor does it have any reason or cause to believe, that it cannot perform each and every covenant contained in this [Servicing] Agreement."

15. Pursuant to Article VII, Section 10.06 of the Servicing Agreement, as well as common law principles of contract and good faith and fair dealing, Ocwen was required to notify 21 Asset of any pending litigation or investigations in "any court, administrative agency or other tribunal" which could affect its ability to perform its obligations pursuant to the Servicing Agreement.

16. Pursuant to Article XI, Section 11.01 of the Servicing Agreement, 21 Asset has the right to immediately "terminate without compensation all the rights and obligations of the Servicer under [the Servicing] Agreement and the Mortgage Loans and the proceeds thereof."

17. Pursuant to Article VIII, Section 8.01 of the Servicing Agreement, Ocwen is required to indemnify and hold 21 Asset harmless from any and all claims and losses arising out of Ocwen's failure to "observe and perform any or all of the Servicer's duties, covenants, agreements, warranties or representations contained in [the Servicing] Agreement; and…to

comply with all applicable requirements contained in [the Servicing] Agreement with respect to the servicing of the Mortgage Loans…"

II. OCWEN'S MATERIAL BREACHES OF THE SERVICING AGREEMENT

18. Unbeknownst to 21 Asset, on December 19, 2013, Ocwen was sued in the United States District Court for the District of Columbia in the action styled *Consumer Financial Protection Bureau, et al. v. Ocwen Financial Corp., et al.* Case No. 1:13-cv-02025-RMC (2013) by the Consumer Financial Protection Bureau ("CFPB") as well as State Mortgage Regulators across the Country for multiple violations of Consumer Protection Law as well as the Consumer Financial Protection Act of 2010 (the "National Lawsuit").

19. Also unbeknownst to 21 Asset, on February 26, 2014, Ocwen entered into a Consent Judgment (the "Consent Judgment") with the CFPB and the State Regulators whereby it agreed among other things, to the following:

a. To follow certain strict additional guidelines in its servicing practices geared towards allowing borrowers to engage in loan modification negotiations and to apply for loan modifications well beyond those required by State and Federal Law.

b. To pay to certain Foreclosed Borrowers (as defined in the Consent Judgment) and make Administration Cost payments totaling $127.3 million; and

c. To provide $2 billion of relief to consumers to "remediate harms allegedly caused by [Ocwen]…" through "principal reduction loan modifications on first lien residential mortgage loans." Ocwen was given three (3) years from the date of the Consent Judgment to comply with the $2 billion relief requirement for consumers.

20. Ocwen failed to disclose to 21 Asset the National Lawsuit as well as the Consent Judgment to which it agreed.

21. 21 Asset did not become aware of either the National Lawsuit or the Consent Judgment until in or about April of 2016.

22. Ocwen's failed servicing practices, consumer protection violations and its obligations pursuant to the Consent Judgment have affected other investors nationwide, as was reported on the Houston PR Newswire on January 23, 2015:

> "Today, the Holders of 25% Voting Rights in 119 Residential Mortgage Backed Securities Trusts (RMBS) with an original balance of more than $82 billion issued a Notice of Non-Performance (Notice) to BNY Mellon, Citibank, Deutsche Bank, HSBC, US Bank, and Wells Fargo, as Trustees, Securities Administrators, and/or Master Servicers, regarding the material failures of Ocwen Financial Corporation (Ocwen) as Servicer and/or Master Servicer, to comply with its covenants and agreements under governing Pooling and Servicing Agreements (PSAs).
>
> "Based on a lengthy investigation and analysis by independent, highly qualified experts, the Holders' Notice alleges Ocwen has failed to perform, in material respects, its contractual obligations as Servicer and/or Master Servicer under the applicable PSAs in the following ways:
>
> - Use of Trust funds to 'pay' Ocwen's required 'borrower relief' obligations under a regulatory settlement, through implementation of modifications on Trust-owned mortgages that have shifted the costs of the settlement to the Trusts and enriched Ocwen unjustly;
>
> - Employing conflicted servicing practices that enriched Ocwen's corporate affiliates, including Altisource and Home Loan Servicing Solutions, to the detriment of the Trusts, investors, and borrowers;
>
> - Engaging in imprudent and wholly improper loan modification, advancing, and advance recovery practices;
>
> - Failure to maintain adequate records, communicate effectively with borrowers, or comply with applicable laws, including consumer protection and foreclosure laws; and,
>
> - Failure to account for and remit accurately to the Trusts cash flows from, and amounts realized on, Trust-owned mortgages.
>
> As a result of the imprudent and improper servicing practices alleged in the Notice, the Holders further allege that their experts' analyses demonstrate that Trusts serviced by Ocwen have performed materially worse than Trusts serviced by other servicers. The Holders further allege that these claimed

> defaults and deficiencies in Ocwen's performance have materially affected the rights of the Holders and constitute an ongoing Event of Default under the applicable PSAs. The Holders intend to take further action to recover these losses and protect the Trusts' assets and mortgages."

23. 21 Asset has fallen victim to these same failed and illegal servicing practices by Ocwen and Ocwen is in material breach of the Servicing Agreement.

24. Ocwen has failed to service the Loans in accordance with the Servicing Agreement and applicable law.

25. Ocwen has failed to provide information and documentation with regard to the Loans to 21 Asset upon request to do so.

26. Ocwen has failed to maintain adequate records for the Loans that are subject to the Servicing Agreement.

27. Ocwen failed to notify 21 Asset of the National Lawsuit or the Consent Judgment that have prevented Ocwen from properly servicing the Loans.

28. Ocwen has improperly released confidential borrower information to third-parties in violation of both State and Federal law without the knowledge or consent of 21 Asset.

29. Ocwen has employed improper and illegal servicing practices to enrich Ocwen and its corporate affiliate, Altisource Portfolio Solutions, S.A. ("Altisource") to the detriment of 21 Asset.

30. 21 Asset has suffered, and continues to suffer substantial damages as a direct result of Ocwen's conduct.

31. On April 28, 2016, after learning of the National Lawsuit and the Consent Judgment, 21 Asset, through counsel, sent Ocwen correspondence providing notice to Ocwen setting forth its various material breaches of the Servicing Agreement and advising Ocwen of its

obligation to provide 21 Asset with all of the records and documentation (the "Servicing Files") for the history of each of the Loans.

32. More than a month later, on June 1, 2016, Ocwen, through counsel, responded to 21 Asset's April 28, 2016 letter.

33. In its response, Ocwen failed to address its failure to produce copies of the records and failed provide any reason for its nondisclosure of the National Lawsuit or the Consent Judgment.

34. In fact, while generally denying lability under the Servicing Agreement in its response to the April 28, 2016 letter, Ocwen also acknowledged that neither Ocwen nor its counsel even has a copy of the Servicing Agreement in their records.

35. To date, Ocwen has failed to provide 21 Asset with any of the Servicing Files for the Loans even though it is required to do so and 21 Asset has demanded that it do so.

36. Ocwen's failure to service the Loans in accordance with the Serving Agreement, accepted servicing practices, as well as the additional servicing requirements Ocwen must abide by as a result of the Consent Judgment it entered into has caused 21 Asset damages through significant increased carrying costs on the Loans, loss of private mortgage insurance ("PMI") proceeds and diminished value of its collateral and assets.

37. Ocwen has charged 21 Asset for artificially inflated property management fees and claimed "advances" it made to its corporate affiliate Altisource.

38. Ocwen has improperly billed 21 Asset for claimed "advances" it made to Altisource and for attorney's fees which was a direct result of Ocwen's obligations pursuant to the Consent Judgment it entered into and as a result of Ocwen's failed servicing practices.

39. Ocwen has improperly passed-through costs to 21 Asset that are the direct result of Ocwen's obligations pursuant to the Consent Judgment.

COUNT I – BREACH OF CONTRACT

40. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "39" with the same force and effect as if herein set forth at length and further alleges:

41. Ocwen's conduct has resulted in its material breach of the Servicing Agreement.

42. By reason of the foregoing, 21 Asset sustained and continues to sustain damages in an amount subject to proof.

COUNT II – BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

43. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "42" with the same force and effect as if herein set forth at length and further alleges:

44. Ocwen had an obligation to act in good faith and in fair dealing with regard to its obligations pursuant to the Servicing Agreement.

45. As a result of the conduct complained of, Ocwen breached its duty of good faith and fair dealing.

46. By reason of the foregoing, 21 Asset sustained and continues to sustain damages in an amount subject to proof.

COUNT III – UNJUST ENRICHMENT

47. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "46" with the same force and effect as if herein set forth at length and further alleges:

48. As a result of the conduct complained of, Ocwen has been unjustly enriched to the detriment of 21 Asset.

49. By reason of the foregoing, 21 Asset sustained and continues to sustain damages in an amount subject to proof.

COUNT IV – CONSTRUCTIVE AND/OR ACTUAL FRAUD

50. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "49" with the same force and effect as if herein set forth at length and further alleges:

51. Ocwen's failure to notify 21 Asset of its obligations pursuant to the Consent Judgment and the fraudulent charges to 21 Asset that have resulted therefrom constitute either actual or constructive fraud by Ocwen.

52. By reason of the foregoing, 21 Asset sustained and continues to sustain damages in an amount subject to proof.

COUNT V – INTENTIONAL AND/OR NEGLIGENT MISREPRESENTATION

53. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "52" with the same force and effect as if herein set forth at length and further alleges:

54. Ocwen's failure to notify 21 Asset of its obligations pursuant to the Consent Judgment and the fraudulent charges to 21 Asset that have resulted therefrom constitute either intentional and/or negligent misrepresentation.

55. By reason of the foregoing, 21 Asset sustained and continues to sustain damages in an amount subject to proof.

COUNT VI – PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

56. 21 Asset repeats and realleges those allegations of the complaint marked and designated herein as "1" through "55" with the same force and effect as if herein set forth at length and further alleges:

57. Pursuant to the terms and conditions of the Servicing Agreement, Ocwen is required to provide 21 Asset with the Servicing Files for each of the Loans.

58. Despite 21 Asset's demand for it to do so, Ocwen continues to hold 21 Asset's files hostage and will not release the Servicing Files.

59. By reason of the foregoing, 21 Asset seeks preliminary and permanent injunctive relief requiring Ocwen to turn over the Servicing Files forthwith.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter judgment against Ocwen on all counts;
2. Enter preliminary and permanent injunctive relief;
3. Award damages against Ocwen;
4. Award Plaintiff its reasonable costs and attorney's fees; and
5. Grant such other and further relief as may be just and equitable.

Respectfully Submitted,
21 Asset Management Holding, LLC,
By its Attorneys,
THE MARGOLIN & WEINREB LAW GROUP, LLP

Date: March 17, 2017

/s/ Alan Weinreb

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